

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1099 be amended to read as follows:

- 1 Page 2, strike lines 16 through 19.
- 2 Page 2, line 20, strike (B) and insert "(A)".
- 3 Page 2, line 23, strike "(C)" and insert "(B)".
- 4 Page 2, line 25, strike "(D)" and insert "(C)".
- 5 Page 3, line 29, delete "fireworks and" and insert "fireworks,
- 6 **fireworks referenced in section 8(a) of this chapter, and".**
- 7 Page 5, between lines 12 and 13, begin a new paragraph and insert:
- 8 **""Responding fire department" means the paid fire department**
- 9 **or volunteer fire department that renders fire protection services**
- 10 **to a political subdivision."**
- 11 Delete pages 9 through 16.
- 12 Page 17, delete lines 1 through 22, begin a new line block indented
- 13 and insert:
- 14 **"and land use rules.**
- 15 **(7) Sales of fireworks may be made from the tent for not more**
- 16 **than forty-five (45) days in a year.**
- 17 **(8) The weight of consumer fireworks in a tent may not exceed**
- 18 **three thousand (3,000) gross pounds of consumer fireworks.**
- 19 **(9) A retailer that legally operated a tent with a registration**
- 20 **in 2005 may continue operation in a tent in 2006 and the**
- 21 **following years. A registration under section 5(b)(3) of this**
- 22 **chapter is required for operation in 2006 and following years.**
- 23 **(10) The retailer holds a valid registration under section**
- 24 **5(b)(3) of this chapter. For purposes of this subdivision, a**
- 25 **retailer includes a resident wholesaler who supplied consumer**
- 26 **fireworks to an applicant for a tent registration in 2005.**
- 27 **(b) A retailer may sell consumer fireworks from a Class 1**
- 28 **structure (as defined in IC 22-12-1-4) that:**
- 29 **(1) complied with the rules for a B-2 or M building occupancy**
- 30 **before July 4, 2003, under the Indiana building code adopted**

by the fire prevention and building safety commission established under IC 22-12-2-1:

(A) in which consumer fireworks were sold or stored on or before July 4, 2003; and

(B) in which no subsequent intervening nonfireworks sales or storage use has occurred;

(2) complies with the rules for an H-3 building occupancy under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1, or the equivalent occupancy classification adopted by subsequent rules of the fire prevention and building safety commission;

(3) complied with the rules for a B-2 or M building occupancy before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1;

(A) in which 1.4G fireworks were sold or stored on or before July 4, 2003;

(B) in a location at which the retailer was registered as a resident wholesaler in 2005; and

(C) in which the retailer's primary business is not the sale of consumer fireworks; or

(4) complies with the rules adopted after July 3, 2003, by the fire prevention and building safety commission established under IC 22-12-2-1 for an M building occupancy under the Indiana building code.

A registration under section 11(a) of this chapter is required for operation in 2006 and following years.

(c) This subsection does not apply to a structure identified in subsection (b)(1), (b)(2), (b)(3), or(b)(4). A retailer may sell consumer fireworks from a structure under the following conditions:

(1) The structure must be a Class 1 structure used for the sale and storage of consumer fireworks.

(2) The sales site must comply with all applicable local zoning and land use rules.

(3) The weight of consumer fireworks in the structure may not exceed three thousand (3,000) gross pounds of consumer fireworks.

(4) The retailer holds a valid registration under section 11(a) of this chapter.

(5) A retailer that legally operated from a structure with a registration in 2005 may continue in operation in the structure in 2006 and the following years. A registration under section 11(a) of this chapter is required for operation in 2006 and following years.

(d) The state fire marshal or a member of the division of fire and building safety staff shall, under section 9 of this chapter, inspect tents and structures in which common fireworks are sold. The state fire marshal may delegate this responsibility to a responding fire department with jurisdiction over the tent or structure subject to the policies and procedures of the state fire marshal.

(e) A retailer shall file an application for each retail location on a form to be provided by the state fire marshal.

(f) This chapter does not limit the quantity of fireworks that may be sold from any Class I structure that complies with the rules of the fire prevention and building safety commission in effect before May 21, 2003.

SECTION 6. IC 22-11-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The state fire marshal shall remove at the expense of the owner, all stocks of fireworks or combustibles possessed, transported, or delivered in violation of this chapter.

(b) The state fire marshal shall stop the shipments and sale of fireworks, novelties, and trick noisemakers unless, prior to shipment into this state for sale, the manufacturer, wholesaler, importer, or distributor of the fireworks, novelties, and trick noisemakers submits to the state fire marshal:

(1) a complete description of each item proposed to be shipped into Indiana;

(2) a written certification that the items are manufactured in accordance with section 1 of this chapter; and

(3) an annual registration fee of one thousand dollars (\$1,000).

**The registration fee shall be collected by the state fire marshal and deposited in the fire and building services fund as set forth in IC 22-12-6-1(c).**

If upon inspection the state fire marshal finds that this chapter has been complied with, an annual certificate of compliance shall be issued to the manufacturer, wholesaler, importer, or distributor. An annual certificate of compliance **may not be applied for after June 15 of a year and** expires December 31 of the year ~~during in~~ which the certificate is issued. Each manufacturer, wholesaler, importer, or distributor must obtain a certificate of compliance. The certificate is not transferable. ~~except that A retailer that offers the items for sale to the public is entitled to receive a certified copy of the certificate from the manufacturer, wholesaler, importer, or distributor from which the retailer purchases the items.~~ A certified copy of the certificate of compliance must be posted in each location where the items are offered for sale to the public. If upon inspection the state fire marshal finds that this chapter has not been complied with, the state fire marshal shall refuse to issue a certificate of compliance and state the reasons for the refusal. A copy of the order denying the issuance of a certificate of

compliance and the reasons shall be forwarded to the manufacturer, wholesaler, importer, or distributor. The state fire marshal may revoke any certificate of compliance issued to any manufacturer, wholesaler, importer, or distributor if the holder of the certificate has violated this chapter.

(c) All fireworks, novelties, and trick noisemakers shipped into Indiana, or manufactured and sold in Indiana, must have distinctly and durably painted, stamped, printed, or marked on the package, box, or container in which the items are enclosed the exact number of pieces in the container.

(d) It is unlawful for a manufacturer, wholesaler, importer, or distributor to sell at wholesale, offer to sell at wholesale, or ship or cause to be shipped into Indiana fireworks, novelties, or trick noisemakers unless the manufacturer, wholesaler, importer, or distributor has been issued and holds a valid certificate of compliance issued under subsection (b). This subsection applies to nonresidents and residents of Indiana.

SECTION 7. IC 22-11-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a)** A person who **recklessly, knowingly, or intentionally** violates ~~section 4(c),~~ **section 2(f), 4.5, 5(c), 5(d), 7, or 8 8(a), 8(c), 10, or 11 (b)** of this chapter commits a Class A misdemeanor.

**(b) A person who ignites, discharges, or uses consumer fireworks at a site other than:**

- (1) a special discharge location;**
- (2) the property of the person; or**
- (3) the property of another who has given permission to use the consumer fireworks;**

**commits a Class C infraction. However, if a person recklessly, knowingly, or intentionally takes an action described in this subsection not later than five (5) years after the person previously took an action described in this subsection, whether or not there has been a judgment that the person committed an infraction in taking the previous action, the person commits a Class C misdemeanor.**

**(c) A person less than eighteen (18) years of age who:**

- (1) possesses a:**
  - (A) firework;**
  - (B) novelty; or**
  - (C) trick noisemaker;**
- other than those set forth in section 8(a) of this chapter; or**
- (2) uses a firework when an adult is not present and responsible at the location of the use;**

**commits a Class C infraction. However, if a person possesses as described in subdivision (1) or uses as described in subdivision (2) not later than five (5) years after a previous possession or use by**

the person as described in this subsection, whether or not there has been a judgment that the person committed an infraction in the previous possession or use, the person commits a delinquent act under IC 31-37.

(d) A person who recklessly, knowingly, or intentionally uses consumer fireworks and the violation causes harm to the property of a person commits a Class A misdemeanor.

(e) A person who recklessly, knowingly, or intentionally uses consumer fireworks and the violation results in serious bodily injury to a person v commits a Class D felony.

(f) A person who recklessly, knowingly, or intentionally uses consumer fireworks and the violation results in the death of a person commits a Class C felony.

(g) A person who knowingly fails to collect or remit to the state the public safety fees due under section 11 of this chapter commits a Class D felony.

SECTION 8. IC 22-11-14-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE] 1: Sec. 7. (a) A retailer selling fireworks at one (1) or more temporary stands must obtain a fireworks stand retail sales permit, referred to in this section as a "permit", from the state fire marshal.

(b) An application for a permit must be made before June 1 of each year and must require that at least the following information be supplied by the retailer:

(1) The retailer's retail merchant certificate number or proof of application for a certificate number.

(2) The location of each **retail sales** stand.

The state fire marshal shall, within seven (7) days after the receipt of an application for a permit, either issue the permit or notify the applicant of the denial of the permit.

(c) The retailer must pay to the state fire marshal an annual permit fee set under IC 22-12-6-8. If the state fire marshal approves an application for a permit, ~~he~~ **the state fire marshal** shall issue a permit to the retailer. The permit expires one (1) year after the date of issuance.

(d) The permit shall be posted by the retailer at the **retail sales** stand so that it is easily seen by the public. However, the state fire marshal's issuance of a permit does not constitute approval of the fireworks offered for sale by the retailer. The retailer is responsible for determining that all fireworks which ~~he~~ **the retailer** offers for sale conform to applicable law.

(e) At each **retail sales** stand, the retailer shall provide:

(1) a posted certificate of compliance, including a descriptive list of approved fireworks; and

(2) a ~~supervisor salesperson~~ **supervisor** who is at least ~~sixteen (16)~~ **eighteen (18)** years of age.

(f) Fireworks may not be sold at retail from ~~trucks, vans, or~~

~~automobiles.~~ **a motor vehicle (as defined in IC 9-13-2-105).**

SECTION 9. IC 22-11-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. **(a)** A person shall not sell at retail, ~~or~~ offer for sale at retail, **or deliver** any fireworks, novelties, or trick noisemakers **to a person less than eighteen (18) years of age** other than the following:

- (1) Dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts may not exceed five (5) grams in total composition per item.
- (2) Cylindrical fountains.
- (3) Cone fountains.
- (4) Illuminating torches.
- (5) Wheels.
- (6) Ground spinners.
- (7) Flitter sparklers.
- (8) Snakes or glow worms.
- (9) Smoke devices.
- (10) Trick noisemakers, which include:
  - (A) Party poppers.
  - (B) Booby traps.
  - (C) Snappers.
  - (D) Trick matches.
  - (E) Cigarette loads.
  - (F) Auto burglar alarms.

**(b) A retailer or wholesaler of consumer fireworks may sell consumer fireworks to a person at least eighteen (18) years of age.**

**(c) An individual who sells fireworks must be at least eighteen (18) years of age.**

**(d) The fire prevention and building safety commission may adopt rules under IC 4-22-2 establishing procedures to ensure compliance with the age limitations set forth in this section.**

SECTION 10. IC 22-11-14-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. A person is strictly liable for death, bodily injury, or property damage caused by that person's use of consumer fireworks.**

SECTION 11. IC 22-11-14-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. ~~(a)~~ Each interstate wholesaler shall keep a record of each sale of **special** fireworks. ~~not approved for sale in Indiana.~~ This record must include:

- (1) the purchaser's name;
- (2) the purchaser's address; and
- (3) the date of the sale.

These records shall be kept for three (3) years and be available for inspection by the fire marshal.

(b) Each resident wholesaler shall post in a prominent location in the wholesaler's place of business a sign that reads as follows:

"Under Indiana law, a resident wholesaler of fireworks may sell fireworks not approved for sale in Indiana only to other resident wholesalers and to purchasers who provide a written and signed assurance that the fireworks are to be shipped out of Indiana within five (5) days of the date of sale. A purchaser who provides a written and signed assurance that fireworks purchased are to be shipped out of Indiana within five (5) days of the date of sale and who then sells the fireworks in Indiana or uses them in Indiana commits a Class A misdemeanor, which is punishable by imprisonment for up to one (1) year and a fine of up to five thousand dollars (\$5,000)."

The state fire marshal shall provide interstate wholesalers with signs for the purposes of this subsection.

SECTION 12. IC 22-11-14-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE MAY 1, 2006]: **Sec. 11. (a) A retailer may not sell consumer fireworks until the retailer has:**

- (1) filed the application required under section 4.5(e) of this chapter with the state fire marshal for each location from which the retailer proposes to sell the consumer fireworks, which must be filed on an annual basis; and**
  - (2) paid an accompanying registration fee of:**
    - (A) one thousand dollars (\$1,000) for the first location if a fee under section 5(b)(3) of this chapter has not been paid;**
    - (B) five hundred dollars (\$500) for each additional sales location in a tent; and**
    - (C) two hundred dollars (\$200) for each additional sales location in a structure;**
- from which the retailer proposes to sell the consumer fireworks.**

Upon receipt of the completed application form, the accompanying fee and if required, the affidavit under subsection (b), the state fire marshal shall issue a certificate of compliance to the retailer for each sales location.

**(b) A person seeking a certificate of compliance authorizing the sale of consumer fireworks at retail from a structure identified in section (5)(b)(1), 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter, or from a tent under section 5(a) of this chapter shall submit with the application:**

- (1) an affidavit executed by a responsible party with personal knowledge, establishing that consumer fireworks were sold at retail from a structure at the same location as of the dates set forth in section 5(b)(1), 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter, or from a tent under section 5(a) of this chapter; and**

(2) proof of sales of consumer fireworks from that location.

(c) A person may not sell consumer fireworks at retail if a certificate of compliance from the state fire marshal has not been issued for the location at which the consumer fireworks will be sold.

(d) A certificate of compliance issued to a retailer of consumer fireworks is not transferable.

SECTION 13. IC 22-11-14-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2006]: Sec. 12. (a) A user fee, known as the public safety fee, is imposed on retail transactions made in Indiana of fireworks.

(b) The person who acquires fireworks in a retail transaction is liable for the public safety fee on the transaction and, except as otherwise provided in this chapter, shall pay the public safety fee to the retailer as a separate added amount to the consideration in the transaction. The retailer shall collect the public safety fee as an agent for the state.

(c) The public safety fee shall be deposited in the state general fund.

(d) The department of state revenue shall adopt rules under IC 4-22-2 necessary for the collection of the public safety fee monies from retailers as described in subsections (b) and (c).

SECTION 14. IC 22-11-14-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2006]: Sec. 13. (a) The public safety fee is measured by the gross retail income received by a retailer in a retail unitary transaction of fireworks and is imposed at the following rates:

PUBLIC SAFETY FEE	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION		
\$ 0		less than	\$0.25
\$ 0.01	at least \$ 0.25	but less than	\$0.50
\$ 0.02	at least \$ 0.50	but less than	\$0.75
\$ 0.03	at least \$ 0.75	but less than	\$1.00
\$ 0.04	at least \$ 1.00		

On a retail unitary transaction in which the gross retail income received by the retail merchant is at least one dollar (\$1), the public safety fee is four percent (4%) of that gross retail income.

(b) If the public safety fee computed under subsection (a) results in a fraction of one-half cent (\$0.005) or more, the amount of the public safety fee shall be rounded to the next additional cent.

SECTION 15. IC 22-11-14-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JUNE 1, 2006]: **Sec. 14. An individual who:**

(1) is an individual retailer or is an employee, an officer, or a member of a corporate or partnership retailer; and  
 (2) has a duty to remit the public safety fee as described in section 11 of this chapter to the department of state revenue; holds the public safety fees collected in trust for the state and is personally liable for the payment of the public safety fee money to the state.

SECTION 16. IC 22-11-14-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15. The fire prevention and building safety commission and the department of state revenue shall adopt rules under IC 4-22-2 to carry out this chapter.**

SECTION 17. IC 35-47-7-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) If:**

(1) a practitioner (as defined in IC 25-1-9-2) initially treats a person for an injury and identifies the person's injury as resulting from fireworks or pyrotechnics, the practitioner; or  
 (2) a hospital or outpatient surgical center initially treats a person for an injury and the administrator of the hospital or outpatient surgical center identifies the person's injury as resulting from fireworks or pyrotechnics, the administrator or the administrator's designee;  
 shall report the case to the state health data center of the state department of health not more than five (5) business days after the time the person is treated. The report may be made in writing on a form prescribed by the state department of health.

(b) A person submitting a report under subsection (a) shall make a reasonable attempt to include the following information:

(1) The name, address, and age of the injured person.  
 (2) The date and time of the injury and the location where the injury occurred.  
 (3) If the injured person was less than eighteen (18) years of age at the time of the injury, whether an adult was present when the injury occurred.  
 (4) Whether the injured person consumed an alcoholic beverage within three (3) hours before the occurrence of the injury.  
 (5) A description of the firework or pyrotechnic that caused the injury.  
 (6) The nature and extent of the injury.

(c) A report made under this section is confidential for purposes of IC 5-14-3-4(a)(1).

(d) The state department of health shall compile the data collected under this section and submit a report of the compiled

1 data to the legislative council in an electronic format under  
2 IC 5-14-6 not later than December 31 of each year.

3 SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE  
4 UPON PASSAGE]: IC 22-11-14.5-2; IC 35-47-7-6.

5 SECTION 18. [EFFECTIVE UPON PASSAGE] The department  
6 of homeland security shall report to the budget committee by July  
7 1, 2006, on the feasibility of the following:

8 (1) Creating a regional program to:

9 (A) train public safety service providers under  
10 IC 10-19-9-3; and

11 (B) provide advanced training programs in public safety  
12 and homeland security matters under IC 10-19-9-4.

13 The report must set out the need for the training, identify  
14 possible locations where training could take place, provide an  
15 estimate of the costs for providing such training, and include  
16 other things the department determines to be relevant.

17 (2) Establishing a state disaster relief fund to provide:

18 (A) matching financial assistance to state agencies and  
19 political subdivisions under any federal program; and

20 (B) direct aid to individuals, families, or communities if an  
21 emergency event does not receive a presidential major  
22 disaster declaration.

23 SECTION 19. [EFFECTIVE UPON PASSAGE] There is  
24 appropriated from the fees collected under IC 22-11-14-11, as  
25 added by this act, one million dollars (\$1,000,000) to the  
26 department of homeland security to provide regional training for  
27 public safety service providers or advanced training programs  
28 during the period beginning July 1, 2006, and ending June 30,  
29 2007. Funds appropriated by this SECTION may be allotted by  
30 the budget agency after review by the budget committee.

31 SECTION 20. [EFFECTIVE UPON PASSAGE] (a)  
32 Notwithstanding IC 22-11-14-2(a) and IC 22-11-14-8(d), both as  
33 amended by this act, and IC 22-11-14-3.5 and IC 22-11-14-15, both  
34 as added by this act, the fire prevention and building safety  
35 commission shall carry out the duties imposed upon it by this act  
36 with respect to the matters referred to in IC 22-11-14-2(a) and  
37 IC 22-11-14-8(d), both as amended by this act, and IC 22-11-14-3.5  
38 and IC 22-11-14-15, both as added by this act, under interim  
39 written guidelines approved by the state fire marshal.

40 (b) This SECTION expires on the earlier of the following:

41 (1) The date rules are respectively adopted under  
42 IC 22-11-14-2(a) and IC 22-11-14-8(d), both as amended by  
43 this act, and IC 22-11-14-3.5 and IC 22-11-14-15, both as  
44 added by this act.

45 (2) December 31, 2007.

46 SECTION 21. [EFFECTIVE UPON PASSAGE] (a)

1       Notwithstanding IC 22-11-14-12(d) and IC 22-11-14-15, both as  
2       added by this act, the department of state revenue shall carry out  
3       the duties imposed upon it by this act with respect to the matters  
4       referred to in IC 22-11-14-12(d) and IC 22-11-14-15, both as  
5       added by this act, under interim written guidelines approved by  
6       the commissioner of the department of state revenue.

7       (b) This SECTION expires on the earlier of the following:

8           (1) The date rules are respectively adopted under  
9           IC 22-11-14-12(d) and IC 22-11-14-15, both as added by this  
10          act.

11          (2) December 31, 2007."

12       SECTION 22. An emergency is declared for this act."

(Reference is to EHB 1099 as printed February 24, 2006.)

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Senator WEATHERWAX